

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY )	

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Zachary Tarry, Chris Gagliastre, and Olga Zayneeva,

*On behalf of themselves and those similarly situated,*

Plaintiffs,

v.

Captain George's of South Carolina, LP;  
 Captain George's of South Carolina, Inc.;  
 Pitsilides Management, LLC; George  
 Pitsilides; and Sherry Pitsilides;

Defendants.

Civil Action No.

Jury Trial Demanded

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Summons for All Defendants

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TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at 504 North Kings Highway, P.O. Box 2433, Myrtle Beach, South Carolina 29578 within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to appear and defend by filing an Answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Glenn V. Ohanesian

Glenn V. Ohanesian

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**Attorneys for Plaintiffs**

November 2, 2018

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 COUNTY OF HORRY )

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Class Action Complaint

1. Zachary Tarry, Chris Gagliastre, and Olga Zayneeva, on behalf of themselves and all similarly-situated individuals, bring this action against Defendants Captain George's of South Carolina, LP; Captain George's of South Carolina, Inc.; Pitsilides Management, LLC; George Pitsilides; Sherry Pitsilides (collectively "Defendants" or "Captain George's"). Plaintiffs seek appropriate monetary, declaratory, and equitable relief based on Defendants' willful failure to compensate Plaintiffs and similarly-situated individuals as required by the South Carolina Payment of Wages Act ("SCPWA"), Code Ann. § 41-10-10, *et seq.*

2. Defendants own Captain George's Seafood Restaurant in Myrtle Beach, South Carolina.

3. Plaintiffs worked for Captain George's as "tipped wage employees," i.e., employees paid less than the minimum wage as an hourly rate on account of Defendants deducting a tip credit from their wages.

4. Plaintiffs bring this action on behalf of themselves and similarly situated tipped wage employees at Captain George's to remedy violations of the SCPWA, S.C. Code Ann. § 40-10-10, *et seq.*

5. Plaintiffs originally filed these SCPWA claims in the District of South Carolina on May 19, 2017. *Gagliastre v. Capt. George's Seafood Restaurants*, No. 4:17-cv-1308 (D.S.C.). The case was transferred to the Eastern District of Virginia. On October 4, 2018, Judge Raymond Jackson, U.S. District Judge in the Eastern District of Virginia, issued an order declining to exercise supplemental jurisdiction over Plaintiffs' state law claims. *Gagliastre v. Capt. George's Seafood Restaurant, LP*, No. 2:17-cv-379, Dkt. 192 (E.D.Va. Oct. 4, 2018). As such, Plaintiffs now re-assert those claims here.

### **I. Jurisdiction and Venue**

6. This Court has general jurisdiction over this matter arising under South Carolina law.

7. Venue is proper in this Court because a substantial part of the facts, circumstances, and events giving rise to this Complaint to place in Horry County, South Carolina.

### **II. Parties**

#### **Plaintiffs**

##### **Chris Gagliastre**

8. Plaintiff Chris Gagliastre is an individual residing in Horry County, South Carolina.

9. At all relevant times, Gagliastre was an “employee” of Defendants within the meaning of the SCPWA.

10. Gagliastre worked for Defendants as a server from March to August of 2015 in Myrtle Beach, South Carolina, and was subject to the policies and practices described herein.

**Zachary Tarry**

11. Plaintiff Zachary Tarry is an individual residing in Horry County, South Carolina.

12. At all relevant times, Tarry was an “employee” of Defendants within the meaning of the SCPWA.

13. Tarry worked for Defendants as a server and as a bartender from August 2014 to the summer of 2015, and was subject to the policies and practices described herein.

**Olga Zayneeva**

14. Plaintiff Olga Zayneeva is an individual residing in Horry County, South Carolina.

15. At all relevant times, Zayneeva has been an “employee” of Defendants within the meaning of the SCPWA.

16. Zayneeva worked for Defendants from June 2015 to approximately late 2017, and was subject to the policies and practices described herein.

**Defendants**

**Captain George’s of South Carolina, LP**

17. Defendant Captain George’s of South Carolina, LP is a foreign limited partnership, with its headquarters in Virginia.

18. Captain George’s of South Carolina, LP operates the Captain George’s Seafood Restaurant located at 1401 29th Avenue N, Myrtle Beach, South Carolina 29577.

19. Captain George's of South Carolina, LP is an "employer" of Plaintiffs and similarly situated tipped wage employees as that term is defined by the SCPWA.

20. Captain George's of South Carolina, LP applies or causes to be applied substantially the same employment policies, practices, and procedures to all tipped wage employees at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, tip pooling, and deductions.

21. Captain George's of South Carolina, LP maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, expense reimbursements, and other practices.

**Captain George's of South Carolina, Inc.**

22. Defendant Captain George's of South Carolina, Inc. is a foreign corporation, with its headquarters in Virginia.

23. Captain George's of South Carolina, Inc. owns all or part of Captain George's of South Carolina, LP.

24. Captain George's of South Carolina, Inc. is an "employer" of Plaintiffs and similarly situated tipped wage employees as that term is defined by the SCPWA.

25. Captain George's of South Carolina, Inc. applies or causes to be applied substantially the same employment policies, practices, and procedures to all tipped wage employees at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, tip pooling, and deductions.

26. Captain George's of South Carolina, Inc. maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, expense reimbursements, and other practices.

**Pitsilides Management, LLC**

27. Defendant Pitsilides Management, LLC is a foreign limited liability company with its headquarters in Virginia.

28. Pitsilides Management, LLC is headquartered at 1956 Laskin Road, Virginia Beach, Virginia 23454.

29. Pitsilides Management, LLC is an “employer” of Plaintiffs and similarly situated tipped wage employees as that term is defined by the SCPWA.

30. Through Pitsilides Management, LLC, Defendants centralize their payroll and benefits policies, practices, and operations.

31. Pitsilides Management, LLC receives a management fee from Captain George’s of South Carolina, LP and Captain George’s of South Carolina, Inc. for marketing efforts, payroll services, benefits management, food, beverage and supply purchasing services, and some premises and equipment management services.

32. Pitsilides Management, LLC receives reports from Captain George’s of South Carolina, LP and Captain George’s of South Carolina, Inc. every two weeks regarding hours worked by the employees at the four Captain George’s locations, generates paychecks, and overnights the paychecks to the four Captain George’s locations.

33. Pitsilides Management, LLC maintains the payroll records for all of Defendants’ employees.

34. Pitsilides Management, LLC applies or causes to be applied substantially the same employment policies, practices, and procedures to all tipped wage employees at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, tips, side work, deductions, and clock in/out procedures.

35. Pitsilides Management, LLC maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, timekeeping, payroll, expense reimbursements, deductions, tips, and other practices.

**George Pitsilides**

36. Defendant George Pitsilides is the founder, owner, and operator of all of the Defendant entities.

37. George Pitsilides is the owner and president of Captain George's of South Carolina, LP.

38. George Pitsilides is the owner and president of Captain George's of South Carolina, Inc.

39. George Pitsilides lives in Virginia Beach, Virginia.

40. Upon information and belief, George Pitsilides operates and controls the Defendant corporations from their headquarters at 1956 Laskin Road, Virginia Beach, Virginia 23454. At all relevant times, George Pitsilides has been an "employer" of Plaintiffs and similarly situated tipped wage employees as that term is defined by the SCPWA.

41. At all relevant times, George Pitsilides has been actively involved in managing the operations of the Captain George's restaurants, including the Myrtle Beach location.

42. At all relevant times, George Pitsilides has had control over Defendants' pay policies.

43. At all relevant times, George Pitsilides has had power over personnel and payroll decisions at the Captain George's restaurants, including the power to hire or fire employees. At all relevant times, George Pitsilides has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

44. At all times relevant, George Pitsilides has had the power to transfer the assets and liabilities of each of the named corporate defendants.

45. At all relevant times, George Pitsilides has had the power to declare bankruptcy on behalf of each of the named corporate defendants.

46. At all relevant times, George Pitsilides has had the power to enter into contracts on behalf of each of the named corporate defendants.

47. At all relevant times, George Pitsilides has had the power to close, shut down, and/or sell each of the named corporate defendants.

**Sharon (Sherry) Pitsilides**

48. Defendant Sherry Pitsilides is a founder, owner, and operator of all of the Defendant entities.

49. Upon information and belief, Sherry Pitsilides lives in Virginia Beach, Virginia.

50. Upon information and belief, Sherry Pitsilides operates and controls the Defendant corporations from their headquarters at 1956 Laskin Road, Virginia Beach, Virginia 23454.

51. At all relevant times, Sherry Pitsilides has been an “employer” of Plaintiffs and similarly situated tipped wage employees as that term is defined by the SCPWA.

52. Sherry Pitsilides is an employee of Pitsilides Management, LLC.

53. Sherry Pitsilides has worked alongside her husband in operating the Captain George’s restaurants for forty years.

54. George Pitsilides has credited the success of the Captain George’s restaurants to he and Sherry Pitsilides’ team approach and the way they handle everyday operations together.

55. At all relevant times, Sherry Pitsilides has been actively involved in managing the operations of the Captain George’s restaurants, including the Myrtle Beach location.



56. At all relevant times, Sherry Pitsilides has had control over Defendants' pay policies.

57. At all relevant times, Sherry Pitsilides has had power over personnel and payroll decisions at the Captain George's restaurants, including power to hire or fire employees.

58. At all relevant times, Sherry Pitsilides has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

59. At all times relevant, Sherry Pitsilides has had the power to transfer the assets and liabilities of each of the named corporate defendants.

60. At all relevant times, Sherry Pitsilides has had the power to declare bankruptcy on behalf of each of the named corporate defendants.

61. At all relevant times, Sherry Pitsilides has had the power to enter into contracts on behalf of each of the named corporate defendants.

62. At all relevant times, Sherry Pitsilides has had the power to close, shut down, and/or sell each of the named corporate defendants.

### **III. Factual Allegations**

63. During all relevant times, Defendants have operated the Captain George's Seafood Restaurants in Myrtle Beach, South Carolina.

64. Plaintiffs and the similarly situated persons they seek to represent are current and former servers or other employees paid minimum wage minus a tip credit employed by Defendants ("tipped employees").

65. At all or some of the time period relevant to this action, Defendants paid tipped wage employees below minimum wage.

66. Defendants purported to pay tipped wage employees tip credit minimum wage,

which is \$2.13 per hour.

67. However, during some or all of the time period relevant to this action, Defendants have paid tipped wage employees \$2.125 per hour.

68. Defendants failed to properly inform and/or notify tipped wage employees that Defendants would be taking a tip credit deduction from tipped wage employees' wages, or that they would be taking an additional half-cent deduction from their wages.

69. Defendants required servers to pay a certain percentage of their total sales directly to the restaurant out of the tips they received.

70. Servers regularly had to pay between 2% or 3% of their total sales for a shift to the restaurant out of their tips.

71. For example, if they generated \$1,000 in sales, and were tipped \$200 from the customers, they would be required to pay \$20 (2%) or \$30 (3%) to the restaurant out of their tips.

72. Defendants used servers' tips to pay hourly wages to bussers, buffet runners, and bartenders that was paid to them on their paychecks.

73. Defendants also tipped out other employees in cash on a nightly basis, including bartenders and management employees.

74. Management employees also participated in the tip pool with tipped wage employees.

75. Management employees were not eligible to share in the tip pool.

76. Upon information and belief, Defendants retained some of the tip money paid out by servers that was intended to be used to pay the hourly wages of bussers, buffet runners, and bartenders.

77. Servers were also required to share tips with and/or pay fees to silverware rollers

who were not customarily engaged in customer service.

78. Silverware rollers are not employees of Captain George's and were not paid a wage by the restaurant.

79. When tipped wage employees' overtime hours were recorded and paid by Defendants, they were paid at the incorrect overtime rate.

80. Defendants required servers to purchase one uniform shirt at the beginning of their employment.

81. If the server worked for Defendants for six months, they either received another work shirt for free, or were reimbursed for the uniform shirt they purchased.

82. Defendants required servers to tip out extra amounts on occasion to cover costs of equipment for the restaurant. For example, servers were sometimes required to tip out an extra amount to cover the costs of the restaurant purchasing new silverware, or to cover the costs of the restaurant purchasing new POSitouch cards.

83. Defendants took improper deductions from tipped wage employees' wages.

84. Defendants took improper deductions from tipped wage employees' tips.

85. Defendants required tipped wage employees to cover expenses that served Defendants' benefit.

86. Defendants did not provide proper notice of the deductions they were taking from tipped wage employees' wage and tips.

87. Defendants' policies caused tipped wage employees to be paid less than minimum wage and overtime.

88. Defendants have not paid tipped wage employees all wages due to them on their regularly scheduled payday.

#### IV. Class Action Allegations

89. Plaintiffs bring this action under the South Carolina Rule of Civil Procedure 23, on behalf of themselves and a class of persons consisting of:

All persons who work or worked as servers and/or have been paid minimum wage minus a tip credit (“tipped wage employees”) for Captain George’s of South Carolina, LP; Captain George’s of South Carolina, Inc.; Pitsilides Management, LLC; George Pitsilides; and/or Sherry Pitsilides in South Carolina between May 19, 2014 and the date of final judgment in this matter (the “Rule 23 Class”).

90. Excluded from the Rule 23 Class are Defendants’ legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges’ immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

91. The Rule 23 Class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

92. There are more than 50 Rule 23 Class members.

93. The Plaintiffs’ claims are typical of those claims which could be alleged by any Rule 23 Class member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class member in separate actions.

94. The Plaintiffs and the Rule 23 Class members were subject to the same corporate practices of Defendants, as alleged herein, of having their a portion of their income unlawfully deducted by Defendants.

95. The Plaintiffs and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants’ failure to comply with S.C. Code Ann. § 41-10-10, *et seq.*

96. The Plaintiffs and the Rule 23 Class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Rule 23 Class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class members.

97. The Plaintiffs and the Rule 23 Class members sustained similar losses, injuries, and damages arising from the same unlawful practices, policies, and procedures.

98. By seeking to represent the interests of the Rule 23 Class members, the Plaintiffs are exercising and intend to exercise their right to engage in concerted activity for the mutual aid or benefit of themselves and their co-workers.

99. The Plaintiffs are able to fairly and adequately protect the interests of the Rule 23 Class and have no interests antagonistic to the South Carolina Class.

100. The Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation.

101. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation on behalf of minimum wage employees where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23 Class members are small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible

for the individual Rule 23 Class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action.

102. This action is properly maintainable as a class action under Rule of Civil Procedure 23(b)(3).

103. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting the Plaintiffs and the Rule 23 Class members individually and include, but are not limited to:

- a. Whether Defendants took deductions from the wages and/or tips of Plaintiffs and the Rule 23 Class;
- b. Whether Defendants provided proper notice of the deductions that they took from the wages and/or tips of Plaintiffs and the Rule 23 Class;
- c. Whether Plaintiffs and the Rule 23 Class were paid all wages due to them on their scheduled payday;
- d. Whether Defendants' policy of failing to pay Plaintiffs and the Rule 23 Class was instituted willfully or with reckless disregard of the law; and
- e. The nature and extent of class-wide injury and the measure of damages for those injuries.

## **V. Causes of Action**

### **Count 1** **South Carolina Payment of Wages Act** **(On Behalf of Plaintiff and the Rule 23 Class)**

104. Plaintiffs restate and incorporate the foregoing allegations as if fully rewritten herein.

105. Defendants are an "employer" as defined by the SCPWA.

106. Defendants employed Plaintiffs and the Rule 23 Class within the state of South Carolina.

107. Defendants illegally deducted amounts from the wages of Plaintiffs without providing proper notice as required by S.C. Code Ann. § 41-10-30(A).

108. Plaintiffs did not receive proper notice of deductions taken from their wages as required by S.C. Code. Ann. § 41-10-40(C).

109. Defendants diverted or withheld portions of the wages and/or tips of Plaintiffs and the Rule 23 Class.

110. Plaintiffs were not paid all wages due by Defendants as required by S.C. Code Ann. § 40-10-40(D).

111. Plaintiffs were not paid all wages due because Plaintiffs were not paid proper minimum wage, proper overtime wages, incurred expenses for the benefit of Defendants, and they had improper deductions taken from their wages and tips.

112. Defendants' unlawful deduction policy was instituted willfully.

113. By making deductions from the income of Plaintiffs, Defendants have violated the SCPWA.

114. As a result of Defendants' violations of the SCPWA, Plaintiffs are entitled to the unlawfully deducted tips and/or wages, unpaid wages due, treble damages, attorneys' fees, costs, and injunctive relief.

**WHEREFORE**, Plaintiffs Chris Gagliastre, Zachary Tarry, and Olga Zayneeva pray for all of the following relief:

A. Certification of this case as a class action pursuant to Rule 23 of the Rules of Civil Procedure with respect to the Rule 23 Class;

B. Designation of Plaintiffs as representatives of the Rule 23 Class and counsel of record as Class Counsel;

- C. A declaratory judgment that the practices complained of herein are unlawful under the SCPWA.
- D. An award of unlawfully deducted tips and unpaid wages due under the SCPWA.
- E. An award of treble damages under the SCPWA.
- F. An award of prejudgment and post-judgment interest.
- G. An award of costs and expenses of this action, together with reasonable attorneys' fees and expert fees.
- H. Such other legal and equitable relief as the Court deems appropriate.

Respectfully submitted,

s/Glenn V. Ohanesian

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**Jury Demand**

Plaintiffs hereby demand a jury trial by the maximum persons permitted by law on all issues herein triable to a jury.

s/Glenn Ohanesian